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AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Group Art Unit: 2145
Examiner: Mr. Wen Tai Lin

In re PATENT APPLICATION of:

Applicant : Lawson A. Wood

Serial No. : 10/649,932

Filed : August 28, 2003

For : METHOD FOR RECOGNIZING AND
DISTRIBUTING MUSIC

Attorney Ref. : AW-20

REQUEST TO
WITHDRAW ORDER

May 29, 2007

Attn: Mail Stop Appeal Brief-Patents

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

This is a request to withdraw the "Order Returning Undocketed Appeal To Examiner," mailed May 23, 2007 (hereafter simply the "Order").

The Order notes that a Supplemented Appeal Brief was filed on December 4, 2006, and comments that the file has no indication that it has been considered. However, even a cursory examination of the file would reveal that the Supplemented Appeal Brief needs no further consideration by the Examiner. It was filed in response to a "Notification Of Non-Compliant Appeal Brief (37 CFR 41.37" dated October 2, 2006. The "Notification Of Non-Compliant Appeal Brief (37 CFR 41.37" imposed dubious objections, of a formal nature, to the original Appeal Brief. The Supplemented Appeal Brief addressed these objections, using a distinctive font so that the supplementary passages added to the original Brief could be readily identified.

Since the supplementation added to the original Brief in the Supplemented Appeal Brief can be readily identified and clearly raises no new arguments that would need to be addressed by the Examiner, and since the objections imposed by the "Notification Of Non-

Compliant Appeal Brief (37 CFR 41.37" had little merit in the first place, the Order should be withdrawn as improvidently issued.

Moreover, the Examiner issued a second Examiner's Answer on January 26, 2007, more than a month after the Supplemented Appeal Brief was filed. The second Examiner's Answer is a slightly modified version of the original Examiner's Answer. In the event that any response by the Examiner to the Supplemented Appeal Brief is deemed to be necessary (despite the above argument to the contrary), the second Examiner's Answer should stand as that response. (Although the second Examiner's Answer mentions only the filing date of the original Brief, the Supplemented Appeal Brief retained the date of the original Brief and mentioned the filing date of the Supplemented Appeal Brief only in a footnote, so the Examiner's identification of the original date in the second Examiner's Answer does not imply that it was the original Brief rather than the Supplemented Appeal Brief that prompted the second Examiner's Answer).

The original Appeal Brief was filed on June 5, 2006. Now, almost a year later, the Order returns the application to the Examiner for no good reason whatsoever. The year's delay has been excessive already, and a further delay that would inevitably follow unless the Order is withdrawn would be unconscionable. This appeal should be scheduled for immediate consideration by the Board.

Respectfully submitted,



Lawson Allen Wood (the Applicant)

(Reg. No. 28,134)

Customer No. 23995

RABIN & BERDO, P.C.

1101 14th Street, N.W.

Suite 500

Washington, D.C. 20005

Telephone: (202) 326-0222

Telefax: (202) 371-8976